

"adapted to be affixed" to one or more components of the bed frame and, therefore, the particular component of the bed frame is not positively claimed by the language.

Claims 4-5 were rejected under 35 U.S.C. 102(b) as being anticipated by Cartwright, U.S. Patent 5,890,244. Claims 1-2, 6-19, 21, 23 and 26-33 were rejected under 35 U.S.C. 103(a) as being unpatentable over Cartwright in view of Wakeland, Jr., U.S. Patent 4,109,887. Claims 24-25 were rejected under 35 U.S.C. 103(a) as being unpatentable over Feld, U.S. Patent 5,867,853 in view of Quintile, U.S. Patent 5,628,080.

First of all, as to the applicability of the main reference cited, that of Cartwright, it should be noted that the prior Examiner had basically cited the same Cartwright reference and had determined that there was patentable subject matter in the present application and had, in fact allowed claim 3 that added to claim 1, the sole feature that the protective shields comprised "molded plastic housings" and apparently recognized the difference between molded plastic protective housings and the soft, vinyl wrapping material disclosed in Cartwright that simply wraps around an upper horizontal rail of a bed guard.

The bed guard of Cartwright reference is not related to the same structure that is referred to in the present application. The present application is concerned with a bed frame for the home and which has sharp corners that can be encountered by persons hitting the corners or other sharp edges by walking in the vicinity of the bed, making the bed or the like activity. To the contrary, Cartwright is merely wrapping a foam material around an upper railing of a bed guard that moves up and down to protect the patient from falling out of the bed and therefore provides a soft padding it to prevent the patient from a injury by hitting the upper railing with the head. The upper railing of Cartwright has no sharp corners, legs, corners etc and therefor the problem faced by Cartwright is totally different than the problem encountered, recognized and solved by the Applicant.

The material of Cartwright is stated to be foam rubber, foam polystyrene, foam polyethylene and gels and certainly is physically totally different from molded plastic housings. Not even the same problem is recognized or faced with the Cartwright reference as contrasted to the Applicant's home bed frame since the soft protective cover of Cartwright is not situated around any sharp corners that are located on a bed frame; the purpose to which Applicant's invention is directed. It is submitted that the soft, foam construction of the Cartwright references would not likely provide much protection against injuries from a person striking a sharp corner of a bed frame as shown and described by Applicant and which problem has been solved by Applicant through the use of molded plastic housings.

Taking claim 1, there is recited the use of molded plastic housings as protective covers and which applicant has found to be suitable for the intended purpose of providing protection to the persons moving external of the bed in passing by, making the bed or the like. The Examiner concedes that Cartwright does not have molded plastic housings and, it is submitted, there is nothing disclosed in Cartwright that would enable one to protect against sharp corners of a bed frame.

Accordingly, taking the newly cited reference of Wakeland Jr., the disclosure of that reference adds nothing to the deficient disclosure of Cartwright nor would the combination of those references be relevant to the present invention. The Wakeland, Jr., reference is directed to a simple means for protecting a wooden frame of a water bed and discloses that the protective cap atop of the wooden frame can be a plastic material, however, from that disclosure, there is no way one would combine the Wakeland, Jr. plastic cap as used on a wooden frame of a water bed with a soft wrapping material around a upper rail of a bed guard of Cartwright to render the present invention as unpatentable.

It simply would not be reasonable to take the protective covers of Cartwright and make them out of molded plastic housings since it would certainly make the Cartwright covers extremely more difficult to manufacture, for no reason whatsoever, but would also not result in a combination that would seem to benefit anything. It is

simply taking a plastic cover of Wakeland, Jr. and saying that the foam wrapping of Cartwright could be made of molded plastic housings based upon some assertion in Wakeland, Jr. that either plastic or a foam material would be suitable for the caps of Wakeland, Jr. Even if Wakeland, Jr. does indicate that plastic may be equivalent to foam material to provide a simple cap for the wooden frame of a water bed, that has no bearing on whether molded plastic housings could be substituted for the foam wrapper of the Cartwright reference where a wholly different use and purpose of the protective devices is involved.

As further evidence of the different applications of the present invention as defined in claim 1 and the combination of the Cartwright and Wakeland, Jr. references, claim 1 also recites that the molded plastic housings are affixed to the bed and are "adapted to enclose the ends of said side rails and said junction points of said side rails and said cross members to cover sharp ends at said locations". There basically are no such locations in either the Cartwright or Wakeland Jr. references. The important distinction relates to the difference between the term "side rail" as used in the Cartwright reference and the term "side rail" disclosed and defined in the present specification. Obviously, each specification writer is his or her own lexicographer such that the term "side rail" must be reviewed in the specification to note the difference in the meanings stated in the different specifications.

The side rails of the present invention are an integral part of the structure of a simple and common bed frame for household use. It is noted that such side rail has a vertical portion and a horizontal portion that supports a mattress and box spring set. These are different planes of the same member and are not separate members that form an assembly. On the other hand, the side rail of the Cartwright reference is a non-structural assemblage of parts that are used to keep a person from falling out of bed. The vertical portion of the Cartwright protective guard must protrude above the top surface of the mattress for it to be functional. The horizontal portions of the Cartwright side rail are separate members that connect to the vertical members to form a lattice, run head to foot and do not support any weight. The

different terms are not interchangeable. It is clear that the terms "side rails" are directed to entirely different components and carry out totally different functions.

The term "leg assemblies" has also been misconstrued. In the Cartwright reference, the "leg assemblies" are referred to in the Office Action, as shown in Fig. 9 of Cartwright. The "AM" feature shown therein is a series of brackets that can be added to a bed guard to keep a person from falling out of bed. They do distend downwardly but the bracket AM of Cartwright allows for holding the bed guard down out of the way and are not legs. The brackets of Cartwright do not support the guard from the floor and are not connected at a junction of any of the member or rails.

The "bracket to affix a head board to a frame" as used in the present claims cannot be found with reference to Fig. 10 as asserted by the Examiner and no bracket seems to be mentioned. Given the board's close proximity to the bed in that Figure, it would seem to be an assumption that there is some structural relationship, however, no such bracket is apparent from the drawings and specification of Cartwright and, therefore, there may not be bracket at all used.

As to the dependent claims referring to "snap fit", the Examiner has referred to the use of the hook and loop fastener means of Cartwright, i.e. Velcro fasteners and is submitted to be an erroneous comparison. A snap fit is asserted to be a snap fit of two hard surfaces to interlock with each other with an audible sound when the engagement is accomplished i.e. snap fit. The Velcro type of fastening means is certainly not a snap fit and it would not be sensible to add a Velcro type of fastening system to molded plastic housings; another distinction with Applicant's use of molded plastic housings as opposed to the fabric that wraps around a member as described by Cartwright.

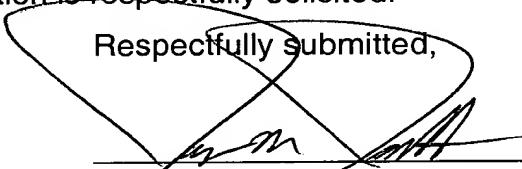
Next, the reference to a "living hinge" as applied to the Cartwright wrapper misapplies the term "living hinge" and a definition of a "living hinge" is submitted herewith. Basically the Cartwright reference has, at most, a fold line in a fabric-like material so as to wrap around a cylindrical structural member and is not a "living

hinge" that, in engineering terms, refers to a rigid or semi-rigid enclosure where there is formed a thinned area that is capable of bending in a controlled fashion. Again, the use of a living hinge illustrates the difference between the use of molded plastic housings of Applicant's invention as opposed to the foam wrap-around material of Cartwright.

Finally, the rejection of claims 24-25 based on a combination of Feld and Quintile, is also traversed. As set forth in the last amendment, there is no suggestion that one would resort to the indicia of Quantile to make a permanent indicia on Feld; it is submitted that the Examiner has merely selected two separate concepts and, by hindsight, constructed a combination thereof where there is no indication of the desirability of permanent indicia or the need to have such indicia that is affixed to a pair of housings that are brought together to enclose a structural member of a bed frame.

Accordingly, it is submitted that the present claims are in an allowable form and the allowance of the present application is respectfully solicited.

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